

109TH CONGRESS
1ST SESSION

S. 263

To provide for the protection of paleontological resources on Federal lands,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2005

Mr. AKAKA (for himself, Mr. BAUCUS, Mrs. FEINSTEIN, Mr. DURBIN, Mr. ROBERTS, and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To provide for the protection of paleontological resources
on Federal lands, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Paleontological Re-
5 sources Preservation Act”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act:

8 (1) CASUAL COLLECTING.—The term “casual
9 collecting” means the collecting of a reasonable
10 amount of common invertebrate and plant paleon-

1 tological resources for non-commercial personal use,
2 either by surface collection or the use of non-pow-
3 ered hand tools resulting in only negligible disturb-
4 ance to the Earth’s surface and other resources. As
5 used in this paragraph, the terms “reasonable
6 amount”, “common invertebrate and plant paleon-
7 tological resources” and “negligible disturbance”
8 shall be determined by the Secretary.

9 (2) SECRETARY.—The term “Secretary” means
10 the Secretary of the Interior with respect to lands
11 controlled or administered by the Secretary of the
12 Interior or the Secretary of Agriculture with respect
13 to National Forest System Lands controlled or ad-
14 ministered by the Secretary of Agriculture.

15 (3) FEDERAL LANDS.—The term “Federal
16 lands” means—

17 (A) lands controlled or administered by the
18 Secretary of the Interior, except Indian lands;
19 or

20 (B) National Forest System lands con-
21 trolled or administered by the Secretary of Ag-
22 riculture.

23 (4) INDIAN LANDS.—The term “Indian Land”
24 means lands of Indian tribes, or Indian individuals,
25 which are either held in trust by the United States

1 or subject to a restriction against alienation imposed
2 by the United States.

3 (5) STATE.—The term “State” means the fifty
4 States, the District of Columbia, the Commonwealth
5 of Puerto Rico, and any other territory or possession
6 of the United States.

7 (6) PALEONTOLOGICAL RESOURCE.—The term
8 “paleontological resource” means any fossilized re-
9 mains, traces, or imprints of organisms, preserved in
10 or on the earth’s crust, that are of paleontological
11 interest and that provide information about the his-
12 tory of life on earth, except that the term does not
13 include—

14 (A) any materials associated with an ar-
15 chaeological resource (as defined in section 3(1)
16 of the Archaeological Resources Protection Act
17 of 1979 (16 U.S.C. 470bb(1)); or

18 (B) any cultural item (as defined in section
19 2 of the Native American Graves Protection
20 and Repatriation Act (25 U.S.C. 3001)).

21 **SEC. 3. MANAGEMENT.**

22 (a) IN GENERAL.—The Secretary shall manage and
23 protect paleontological resources on Federal lands using
24 scientific principles and expertise. The Secretary shall de-
25 velop appropriate plans for inventory, monitoring, and the

1 scientific and educational use of paleontological resources,
2 in accordance with applicable agency laws, regulations,
3 and policies. These plans shall emphasize interagency co-
4 ordination and collaborative efforts where possible with
5 non-Federal partners, the scientific community, and the
6 general public.

7 (b) COORDINATION.—To the extent possible, the Sec-
8 retary of the Interior and the Secretary of Agriculture
9 shall coordinate in the implementation of this Act.

10 **SEC. 4. PUBLIC AWARENESS AND EDUCATION PROGRAM.**

11 The Secretary shall establish a program to increase
12 public awareness about the significance of paleontological
13 resources.

14 **SEC. 5. COLLECTION OF PALEONTOLOGICAL RESOURCES.**

15 (a) PERMIT REQUIREMENT.—

16 (1) IN GENERAL.—Except as provided in this
17 Act, a paleontological resource may not be collected
18 from Federal lands without a permit issued under
19 this Act by the Secretary.

20 (2) CASUAL COLLECTING EXCEPTION.—The
21 Secretary may allow casual collecting without a per-
22 mit on Federal lands controlled or administered by
23 the Bureau of Land Management, the Bureau of
24 Reclamation, and the Forest Service, where such col-

1 lection is consistent with the laws governing the
2 management of those Federal lands and this Act.

3 (3) PREVIOUS PERMIT EXCEPTION.—Nothing in
4 this section shall affect a valid permit issued prior
5 to the date of enactment of this Act.

6 (b) CRITERIA FOR ISSUANCE OF A PERMIT.—The
7 Secretary may issue a permit for the collection of a paleon-
8 tological resource pursuant to an application if the Sec-
9 retary determines that—

10 (1) the applicant is qualified to carry out the
11 permitted activity;

12 (2) the permitted activity is undertaken for the
13 purpose of furthering paleontological knowledge or
14 for public education;

15 (3) the permitted activity is consistent with any
16 management plan applicable to the Federal lands
17 concerned; and

18 (4) the proposed methods of collecting will not
19 threaten significant natural or cultural resources.

20 (c) PERMIT SPECIFICATIONS.—A permit for the col-
21 lection of a paleontological resource issued under this sec-
22 tion shall contain such terms and conditions as the Sec-
23 retary deems necessary to carry out the purposes of this
24 Act. Every permit shall include requirements that—

1 (1) the paleontological resource that is collected
 2 from Federal lands under the permit will remain the
 3 property of the United States;

4 (2) the paleontological resource and copies of
 5 associated records will be preserved for the public in
 6 an approved repository, to be made available for sci-
 7 entific research and public education; and

8 (3) specific locality data will not be released by
 9 the permittee or repository without the written per-
 10 mission of the Secretary.

11 (d) MODIFICATION, SUSPENSION, AND REVOCATION
 12 OF PERMITS.—

13 (1) The Secretary may modify, suspend, or re-
 14 voke a permit issued under this section—

15 (A) for resource, safety, or other manage-
 16 ment considerations; or

17 (B) when there is a violation of term or
 18 condition of a permit issued pursuant to this
 19 section.

20 (2) The permit shall be revoked if any person
 21 working under the authority of the permit is con-
 22 victed under section 9 or is assessed a civil penalty
 23 under section 10.

24 (e) AREA CLOSURES.—In order to protect paleon-
 25 tological or other resources and to provide for public safe-

1 ty, the Secretary may restrict access to or close areas
2 under the Secretary's jurisdiction to the collection of pale-
3 ontological resources.

4 **SEC. 6. CURATION OF RESOURCES.**

5 Any paleontological resource, and any data and
6 records associated with the resource, collected under a per-
7 mit, shall be deposited in an approved repository. The Sec-
8 retary may enter into agreements with non-Federal reposi-
9 tories regarding the curation of these resources, data, and
10 records.

11 **SEC. 7. PROHIBITED ACTS; CRIMINAL PENALTIES.**

12 (a) IN GENERAL.—A person may not—

13 (1) excavate, remove, damage, or otherwise
14 alter or deface or attempt to excavate, remove, dam-
15 age, or otherwise alter or deface any paleontological
16 resources located on Federal lands unless such activ-
17 ity is conducted in accordance with this Act;

18 (2) exchange, transport, export, receive, or offer
19 to exchange, transport, export, or receive any pale-
20 ontological resource if, in the exercise of due care,
21 the person knew or should have known such resource
22 to have been excavated or removed from Federal
23 lands in violation of any provisions, rule, regulation,
24 law, ordinance, or permit in effect under Federal
25 law, including this Act; or

1 (3) sell or purchase or offer to sell or purchase
2 any paleontological resource if, in the exercise of due
3 care, the person knew or should have known such re-
4 source to have been excavated, removed, sold, pur-
5 chased, exchanged, transported, or received from
6 Federal lands.

7 (b) FALSE LABELING OFFENSES.—A person may not
8 make or submit any false record, account, or label for,
9 or any false identification of, any paleontological resource
10 excavated or removed from Federal lands.

11 (c) PENALTIES.—A person who knowingly violates or
12 counsels, procures, solicits, or employs another person to
13 violate subsection (a) or (b) shall, upon conviction, be
14 fined in accordance with title 18, United States Code, or
15 imprisoned not more than 10 years, or both; but if the
16 sum of the commercial and paleontological value of the
17 paleontological resources involved and the cost of restora-
18 tion and repair of such resources does not exceed \$500,
19 such person shall be fined in accordance with title 18,
20 United States Code, or imprisoned not more than one
21 year, or both.

22 (d) GENERAL EXCEPTION.—Nothing in subsection
23 (a) shall apply to any person with respect to any paleon-
24 tological resource which was in the lawful possession of
25 such person prior to the date of the enactment of this Act.

1 **SEC. 8. CIVIL PENALTIES.**

2 (a) IN GENERAL.—

3 (1) HEARING.—A person who violates any pro-
4 hibition contained in an applicable regulation or per-
5 mit issued under this Act may be assessed a penalty
6 by the Secretary after the person is given notice and
7 opportunity for a hearing with respect to the viola-
8 tion. Each violation shall be considered a separate
9 offense for purposes of this section.

10 (2) AMOUNT OF PENALTY.—The amount of
11 such penalty assessed under paragraph (1) shall be
12 determined under regulations promulgated pursuant
13 to this Act, taking into account the following factors:

14 (A) The scientific or fair market value,
15 whichever is greater, of the paleontological re-
16 source involved, as determined by the Secretary.

17 (B) The cost of response, restoration, and
18 repair of the resource and the paleontological
19 site involved.

20 (C) Any other factors considered relevant
21 by the Secretary assessing the penalty.

22 (3) MULTIPLE OFFENSES.—In the case of a
23 second or subsequent violation by the same person,
24 the amount of a penalty assessed under paragraph
25 (2) may be doubled.

1 (4) LIMITATION.—The amount of any penalty
2 assessed under this subsection for any one violation
3 shall not exceed an amount equal to double the cost
4 of response, restoration, and repair of resources and
5 paleontological site damage plus double the scientific
6 or fair market value of resources destroyed or not
7 recovered.

8 (b) PETITION FOR JUDICIAL REVIEW; COLLECTION
9 OF UNPAID ASSESSMENTS.—

10 (1) JUDICIAL REVIEW.—Any person against
11 whom an order is issued assessing a penalty under
12 subsection (a) may file a petition for judicial review
13 of the order in the United States District Court for
14 the District of Columbia or in the district in which
15 the violation is alleged to have occurred within the
16 30-day period beginning on the date the order mak-
17 ing the assessment was issued. Upon notice of such
18 filing, the Secretary shall promptly file such a cer-
19 tified copy of the record on which the order was
20 issued. The court shall hear the action on the record
21 made before the Secretary and shall sustain the ac-
22 tion if it is supported by substantial evidence on the
23 record considered as a whole.

24 (2) FAILURE TO PAY.—If any person fails to
25 pay a penalty under this section within 30 days—

1 (A) after the order making assessment has
2 become final and the person has not filed a pe-
3 tition for judicial review of the order in accord-
4 ance with paragraph (1); or

5 (B) after a court in an action brought in
6 paragraph (1) has entered a final judgment up-
7 holding the assessment of the penalty, the Sec-
8 retary may request the Attorney General to in-
9 stitute a civil action in a district court of the
10 United States for any district in which the per-
11 son is found, resides, or transacts business, to
12 collect the penalty (plus interest at currently
13 prevailing rates from the date of the final order
14 or the date of the final judgment, as the case
15 may be). The district court shall have jurisdic-
16 tion to hear and decide any such action. In
17 such action, the validity, amount, and appro-
18 priateness of such penalty shall not be subject
19 to review. Any person who fails to pay on a
20 timely basis the amount of an assessment of a
21 civil penalty as described in the first sentence of
22 this paragraph shall be required to pay, in addi-
23 tion to such amount and interest, attorneys fees
24 and costs for collection proceedings.

1 (c) HEARINGS.—Hearings held during proceedings
 2 instituted under subsection (a) shall be conducted in ac-
 3 cordance with section 554 of title 5, United States Code.

4 (d) USE OF RECOVERED AMOUNTS.—Penalties col-
 5 lected under this section shall be available to the Secretary
 6 and without further appropriation may be used only as
 7 follows:

8 (1) To protect, restore, or repair the paleon-
 9 tological resources and sites which were the subject
 10 of the action, or to acquire sites with equivalent re-
 11 sources, and to protect, monitor, and study the re-
 12 sources and sites. Any acquisition shall be subject to
 13 any limitations contained in the organic legislation
 14 for such Federal lands.

15 (2) To provide educational materials to the
 16 public about paleontological resources and sites.

17 (3) To provide for the payment of rewards as
 18 provided in section 11.

19 **SEC. 9. REWARDS AND FORFEITURE.**

20 (a) REWARDS.—The Secretary may pay from pen-
 21 alties collected under section 9 or 10—

22 (1) consistent with amounts established in regu-
 23 lations by the Secretary; or

24 (2) if no such regulation exists, an amount
 25 equal to the lesser of one-half of the penalty or

1 \$500, to any person who furnishes information
2 which leads to the finding of a civil violation, or the
3 conviction of criminal violation, with respect to
4 which the penalty was paid. If several persons pro-
5 vided the information, the amount shall be divided
6 among the persons. No officer or employee of the
7 United States or of any State or local government
8 who furnishes information or renders service in the
9 performance of his official duties shall be eligible for
10 payment under this subsection.

11 (b) FORFEITURE.—All paleontological resources with
12 respect to which a violation under section 9 or 10 occurred
13 and which are in the possession of any person, and all
14 vehicles and equipment of any person that were used in
15 connection with the violation, shall be subject to civil for-
16 feiture, or upon conviction, to criminal forfeiture. All pro-
17 visions of law relating to the seizure, forfeiture, and con-
18 demnation of property for a violation of this Act, the dis-
19 position of such property or the proceeds from the sale
20 thereof, and remission or mitigation of such forfeiture, as
21 well as the procedural provisions of chapter 46 of title 18,
22 United States Code, shall apply to the seizures and forfeit-
23 ures incurred or alleged to have incurred under the provi-
24 sions of this Act.

1 (c) TRANSFER OF SEIZED RESOURCES.—The Sec-
2 retary may transfer administration of seized paleontolog-
3 ical resources to Federal or non-Federal educational insti-
4 tutions to be used for scientific or educational purposes.

5 **SEC. 10. CONFIDENTIALITY.**

6 Information concerning the nature and specific loca-
7 tion of a paleontological resource the collection of which
8 requires a permit under this Act or under any other provi-
9 sion of Federal law shall be exempt from disclosure under
10 section 552 of title 5, United States Code, and any other
11 law unless the Secretary determines that disclosure
12 would—

13 (1) further the purposes of this Act;

14 (2) not create risk of harm to or theft or de-
15 struction of the resource or the site containing the
16 resource; and

17 (3) be in accordance with other applicable laws.

18 **SEC. 11. REGULATIONS.**

19 As soon as practical after the date of the enactment
20 of this Act, the Secretary shall issue such regulations as
21 are appropriate to carry out this Act, providing opportuni-
22 ties for public notice and comment.

23 **SEC. 12. SAVINGS PROVISIONS.**

24 Nothing in this Act shall be construed to—

1 (1) invalidate, modify, or impose any additional
2 restrictions or permitting requirements on any ac-
3 tivities permitted at any time under the general min-
4 ing laws, the mineral or geothermal leasing laws,
5 laws providing for minerals materials disposal, or
6 laws providing for the management or regulation of
7 the activities authorized by the aforementioned laws
8 including but not limited to the Federal Land Policy
9 Management Act (43 U.S.C. 1701–1784), the Min-
10 ing in the Parks Act, the Surface Mining Control
11 and Reclamation Act of 1977 (30 U.S.C. 1201–
12 1358), and the Organic Administration Act (16
13 U.S.C. 478, 482, 551);

14 (2) invalidate, modify, or impose any additional
15 restrictions or permitting requirements on any ac-
16 tivities permitted at any time under existing laws
17 and authorities relating to reclamation and multiple
18 uses of Federal lands;

19 (3) apply to, or require a permit for, casual col-
20 lecting of a rock, mineral, or invertebrate or plant
21 fossil that is not protected under this Act;

22 (4) affect any lands other than Federal lands or
23 affect the lawful recovery, collection, or sale of pale-
24 ontological resources from lands other than Federal
25 lands;

1 (5) alter or diminish the authority of a Federal
2 agency under any other law to provide protection for
3 paleontological resources on Federal lands in addi-
4 tion to the protection provided under this Act; or

5 (6) create any right, privilege, benefit, or enti-
6 tlement for any person who is not an officer or em-
7 ployee of the United States acting in that capacity.
8 No person who is not an officer or employee of the
9 United States acting in that capacity shall have
10 standing to file any civil action in a court of the
11 United States to enforce any provision or amend-
12 ment made by this Act.

13 **SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

14 There are authorized to be appropriated such sums
15 as may be necessary to carry out this Act.

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